



City of Sonora
Tuolumne County
94 N. Washington Street
Sonora, California 95370

Administration/Finance/City Clerk 532-4541
Planning/Building Department 532-3508
Public Works Department 532-2922
Police Department 532-8143
Fire Department 532-7432
Opera Hall/Redevelopment-Grants 532-7725

Amended Administrative Policy #07

MEMORANDUM

DATE:

TO: All City Employees

FROM: Greg Applegate, City Administrator

SUBJECT: Nondiscrimination, Harassment and Sexual Harassment Policy

The attached Administrative Policy governs the policies and procedures for which all City employees/representatives are to adhere to, with respect to Nondiscrimination, Harassment and Sexual Harassment.

APPROVED BY SONORA CITY COUNCIL

Ronald E. Stearns *1-18-00*

Ronald E. Stearn, Mayor Date

CITY OF SONORA

NONDISCRIMINATION, HARASSMENT, AND SEXUAL HARASSMENT POLICY

The City of Sonora is committed to maintaining and promoting an employment environment free of unlawful discrimination, including harassment and sexual harassment. In keeping with this commitment, the City strongly forbids any form of discrimination of its employees/representatives (including elected/appointed officials, volunteers, independent contractors, job applicants, etc.) or members of the public by anyone, including by any supervisor, co-worker, representative, vendor, contractor, or member of the public. To do so will make them subject to disciplinary action, up to and including discharge, if applicable. To meet this commitment, the City has enacted these regulations to identify and eliminate unlawful discrimination, harassment and sexual harassment.

Discrimination, including harassment and sexual harassment, on the basis of race, religion, creed, political affiliation, color, national origin, ancestry, sex, sexual orientation, age, familial status, medical condition, pregnancy, or mental or physical disability, is unlawful and will not be tolerated by the City. This includes those individuals who are perceived to have any of those characteristics or are associated with a person who has, or is perceived to have, any of those characteristics that are protected under the California Fair Employment & Housing Act, the Federal Civil Rights Act, Title VII, the Americans with Disabilities Act, the Age Discrimination in Employment Act, The Equal Pay Act, the Rehabilitation Act, and all impending and future regulations regarding protected classes. In addition, unlawful discrimination, including harassment and sexual harassment, will not be tolerated in any and all aspects of the employment process.

Both State and Federal law provide protection for employees/representatives who have been the subject of unlawful employment discrimination, and prohibit retaliation against employees/representatives who have reported or otherwise opposed discriminatory practices. Employees/Representatives who assist the City in discovering and eliminating unlawful discrimination will not be retaliated against for their participation.

A. HARASSMENT

Harassment on the basis of race, religion, creed, political affiliation, color, national origin, ancestry, sex, sexual orientation, age, familial status, medical condition, pregnancy, or mental or physical disability is prohibited. Verbal or physical conduct relating to these categories constitutes harassment when it:

1. Has the purpose or effect of creating an intimidating, hostile or offensive working environment.
2. Has the purpose or effect of unreasonably interfering with an individual's work performance; or

3. Otherwise adversely affects an individual's employment opportunities.

Conduct which might constitute harassment would be conduct reasonably considered to be offensive, including:

1. Offensive verbal conduct, including epithets, derogatory comments, slurs, demeaning jokes, nicknames, sexual innuendos, whistling, propositions, threats, or profanity;
2. Unwanted physical conduct including touching, assault, impeding or blocking movement, interference with normal work, or gestures;
3. Offensive visual conduct, including display of posters, calendars, cartoons, drawings, or pictures; or
4. Unwanted sexual favors.

B. SEXUAL HARASSMENT

Sexual harassment is a form of unlawful sex discrimination and will not be tolerated by the City. Federal and State guidelines provide that unwelcome sexual advances, request for sexual favors and other verbal, visual, or physical conduct of a sexual nature constitute unlawful harassment when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
2. The submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
3. Sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature have the purpose or effect of unreasonably interfering with an employee's/representative's work performance or of creating an intimidating, hostile, or offensive work environment.

Sexual harassment does not refer to occasional compliments or other behavior of a socially acceptable nature. It refers to conduct that is not welcome, that is offensive, that fails to respect the rights and dignity of others, that lowers morale and that, therefore, interferes with work effectiveness.

Examples:

Question: *One female employee is a flirt. She regularly trades sexual innuendoes with some of the male employees. Some of this talk is offensive, but she's never complained about it. Should something be done?*

Answer: Yes. All of the employees involved should be spoken to about the inappropriateness of their conduct at work. Since a complaint has not been filed,

a private talk with each employee should do the job. Keep in mind that a “hostile environment” can evolve over time. Small incidents can add up to harassment. The fact that a female employee seems to be a willing participant is irrelevant.

Question: *I work with an older male employee who has called me “Hon” since my first day on the job. He calls all of the female employees “Hon”, too. I’ve spoken to him about the use of this term, but he refuses to stop using it. He says that he does not mean anything by it (I believe him), he has been using it for years, and you “can’t teach an old dog new tricks.” What do I do next?*

Answer: Old dogs can learn new tricks. Speak to your supervisor. Explain that you know he does not mean anything by using “Hon”, but that it’s not your interpretation of his intent or his interpretation of his intent that counts.

Question: *One of our female managers has been accused by a male employee of demanding sexual favors in return for a promotion. Can a male be a victim of sexual harassment?*

Answer: Yes. This type of sexual harassment fits within the EEOC’s definition of *quid pro quo* harassment. While no court has yet ruled on whether a male employee can be a victim of hostile environment sexual harassment, the equal application of the law and the EEOC’s guidelines would suggest that male employees can be a victims of that kind of harassment, as well.

Question: *I work with a gay male. His sexual orientation is not widely known among our other co-workers, and I have overheard some of these employees making fun of gays and telling gay jokes. Could my gay male co-worker claim that he’s in a hostile environment that constitutes sexual harassment?*

Answer: Yes. Just as the EEOC guideline does not distinguish between male and female employees, it does not distinguish between homosexual and heterosexual employees. The DFEH specifically lists sexual orientation as a protected category. You should speak to the supervisor. You do not have to provide a reason (i.e., you do not have to disclose your co-worker’s confidence). There’s no place in our business for *any* joke at someone else’s expense.

C. COMPLAINT PROCEDURE:

The City’s nondiscrimination, harassment and sexual harassment policy covers verbal, physical and visual forms of harassment based on race, religion, creed, political affiliation, color, national origin, ancestry, sex, sexual orientation, age, familial status, medical condition, pregnancy, or mental or physical disability, as well as sexual harassment. The goal of a nondiscrimination complaint procedure is to stop discriminatory behavior in a prompt and effective manner, while still maintaining a good working relationship among the City’s employees/representatives. All City employees/representatives have the right to file complaints of alleged discrimination. The procedure for filing such complaints is as follows:

1. Informal Complaint: Any employee/representative who has been harassed should attempt immediately to resolve the problem informally by expressing his/her discomfort with the behavior of the offender in a constructive manner, and by requesting the offender to stop the behavior. The City strongly urges use of the informal complaint procedure, but it is not a prerequisite to the filing of a formal complaint.
2. Formal Complaint: Any employee/representative who believes that he or she has personally suffered unlawful harassment or discrimination, or one who has learned of such conduct in his or her official capacity, shall promptly report it, either orally or in writing to his/her immediate supervisor, or any supervisor or department head. If the employee/representative feels uncomfortable doing so, or if any of these individuals are the source of the problem, condones the problem, or ignores the problem, report it to the City Administrator. If none of these alternatives are satisfactory, call the *Employee Protection Line*® by dialing toll-free 800-576-5262, using the *City's Code Number 10075*. This line is monitored 24 hours a day by an independent third party and a call can be made without disclosing the caller's identity. In making such reports, the employee/representative need not follow any established chain of supervision, so long as the matter is reported to one of the options outlined above.
3. Investigation of Complaint: Upon receipt of a complaint of discrimination or harassment, the City Administrator, or his/her designee, will conduct a prompt investigation into the allegations. The investigation may include meeting with the complainant, the accused, and any witnesses to the conduct. It should be noted that Peace Officers have certain rights under the Peace Officers' Bill of Rights.
4. Resolution: Once the investigation is complete, the City Administrator will make a determination of the appropriate corrective action, if any, and will inform the complainant. Written findings shall be made when appropriate. In the event the complainant is not satisfied with the corrective action taken, the City Administrator will inform the complainant of their right to file administrative charges with the Department of Fair Employment and Housing (DFEH) or the Equal Employment Opportunity Commission (EEOC).
5. Confidentiality: Throughout the process, the matter subject to the complaint shall be kept as confidential as possible. Materials pertaining to the complaint which do not form a basis for discipline shall be maintained in a file separate from the personnel files of the participants.
6. Dissemination of Policy: Copies of the City's Nondiscrimination, Harassment and Sexual Harassment Policy, and of these complaint procedures, shall be provided to all employees/representatives of the City upon issuance, and to all new employees/representatives at the time of hiring/appointment. From time to time, the City may also conduct training to its employees/representatives to assist them in learning how to recognize, avoid and correct discriminatory behavior.

D. OBLIGATION OF CITY EMPLOYEES/REPRESENTATIVES

The City Administrator is responsible for ensuring the City's compliance with this policy.

Employees/Representatives are responsible for knowing the City's policy on nondiscrimination; refraining from discriminatory behavior, including harassment; reporting incidents of discrimination in a timely fashion; cooperating in any investigation concerning allegations of discrimination; and maintaining confidentiality concerning any investigation that is conducted.

In addition, Department Heads and Supervisors are responsible for ensuring that their employees/representatives are aware of the City's policy on nondiscrimination; enforcing the City's policy among those they supervise; when discriminatory behavior is found to be occurring, taking prompt, appropriate corrective action that is reasonably designed to make the behavior stop.

All employees/representatives are also encouraged to communicate with one another to assist co-workers in avoiding harassing, discriminatory, or otherwise offensive behavior.